

267 NLRB No. 56

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D--1027
Romeoville, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LEWIS UNIVERSITY

and

Case 13--CA--23077

FACULTY LIFE COMMITTEE OF THE
COLLEGE OF ARTS AND SCIENCES

DECISION AND ORDER

Upon a charge filed on 18 March 1983 by Faculty Life Committee of the College of Arts and Sciences, herein called the Union, and duly served on Lewis University, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on 6 April 1983 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 1 April 1975 the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; in a

Decision and Order of the National Labor Relations Board dated 16 December 1982, the unit was found appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act;¹ and that, commencing about the middle of January 1983,² and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so.³ On 15 April 1983, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 6 May 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 18 May 1983, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's

¹ Lewis University, 265 NLRB No. 157 (1982). Official notice is taken of the record in the unit clarification proceedings, Cases 13--UC--126 and 13--UC--130, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, Inc., 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

² The complaint alleges that in or about the middle of January 1983, and on or about 25 February 1983 the Union, orally, and on or about 8 February 1983 the Union, by letter, requested Respondent to recognize it as the exclusive collective-bargaining representative of the employees in the unit and to bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment, and other terms and conditions of employment.

³ The complaint alleges that since in or about the middle of January 1983, and including by a letter from Respondent dated 24 February 1983, Respondent has failed and refused to recognize and bargain with the Union as the exclusive representative of the unit.

Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and its response to the Notice To Show Cause, Respondent repeats the argument, first raised in the unit clarification proceedings, that the Board lacks statutory jurisdiction over Respondent as it is a church-operated school. N.L.R.B. v. The Catholic Bishop of Chicago, 440 U.S. 490 (1979). Additionally, Respondent contends that all members of the Union are managers/supervisors and therefore should be excluded from the unit. Yeshiva University, 442 U.S. 938 (1980).⁴ The General Counsel argues that all material issues have been previously presented to, and decided by, the Board, and that there are no litigable issues of fact requiring a hearing. We agree with the General Counsel.

Our review of the record herein, including the record in Cases 13--UC--126 and 13--UC--130, discloses that the Union was certified on 1 April 1975 as the exclusive collective-bargaining representative of the unit found appropriate. Thereafter,

⁴ As the Union would therefore have no statutory employees to represent, Respondent further argues that the Union is not a labor organization within the meaning of Sec. 2(5) of the Act.

separate petitions were filed by Respondent and the Union seeking to have the Board clarify the status of the employees in the unit found appropriate. A consolidated hearing was held and thereafter the Regional Director for Region 13 transferred this proceeding to the Board for decision, pursuant to Section 102.67 of the Board's Rules and Regulations, Series 8, as amended. Both Respondent and the Union filed briefs. On 16 December 1982 the Board issued a Decision and Order, reported at 265 NLRB No. 157, in which it found the unit represented by the Union to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and dismissed the unit clarification petitions filed by Respondent and the Union.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior unit clarification proceeding.⁵

All issues raised by Respondent in this proceeding were or could have been litigated in the prior unit clarification proceedings, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the unit

⁵ In its answer to the complaint, Respondent denies that it refused to bargain with the Union. We find merit in the counsel for the General Counsel's averments that Respondent's letter of 24 February 1983, attached to the counsel for the General Counsel's Motion for Summary Judgment, is a clear admission of its refusal to bargain.

clarification proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.⁶

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is now, and has been at all times material herein, a private nonprofit institution of higher education with offices and educational facilities in Romeoville, Illinois. During the calendar year ending 31 December 1982, a representative period, Respondent, in the course and conduct of its business operations derived gross revenues in excess of \$1 million and received in excess of \$50,000 of that amount directly from sources located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Faculty Life Committee of the College of Arts and Sciences is a labor organization within the meaning of Section 2(5) of the Act.

⁶ See Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Sec. 102.67(f).

III. The Unfair Labor Practices

A. The Representation Proceeding1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time faculty employees employed by Respondent in the College of Arts and Sciences of Lewis University, now located in Romeoville, Illinois, including professors and associate professors, assistant professors and instructors excluding all professional librarians, part-time faculty employees, all faculty employees of The College of Nursing, Business and Continuing Education, all deans, guidance counselors, office clerical employees, guards, supervisors as defined in the Act and all other employees.

2. The certification

The Union was certified as the collective-bargaining representative of the employees in said unit on 1 April 1975 and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing about the middle of January 1983, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing about the middle of January 1983, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since the middle of January 1983 and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as

the recognized bargaining representative in the appropriate unit. See Mar-Jac Poultry Company, Inc., 136 NLRB 785 (1962); Commerce Company d/b/a Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Lewis University is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Faculty Life Committee of the College of Arts and Sciences is a labor organization within the meaning of Section 2(5) of the Act.
3. All full-time faculty employees employed by Respondent in the College of Arts and Sciences of Lewis University, now located in Romeoville, Illinois, including professors and associate professors, assistant professors and instructors excluding all professional librarians, part-time faculty employees, all faculty employees of The College of Nursing, Business and Continuing Education, all deans, guidance counselors, office clerical employees, guards, supervisors as defined in the Act and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. Since 1 April 1975 the above-named labor organization has been and now is the certified and exclusive representative of

all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing about the middle of January 1983, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lewis University, Romeoville, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Faculty Life Committee of the College of Arts and Sciences

as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time faculty employees employed by Respondent in the College of Arts and Sciences of Lewis University, now located in Romeoville, Illinois, including professors and associate professors, assistant professors and instructors excluding all professional librarians, part-time faculty employees, all faculty employees of The College of Nursing, Business and Continuing Education, all deans, guidance counselors, office clerical employees, guards, supervisors as defined in the Act and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at Lewis University, Romeoville, Illinois, copies of the attached notice marked "'Appendix.'"⁷ Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be

⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

24 August 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

MEMBER HUNTER, dissenting:

For the reasons fully explicated in my dissenting position in the underlying representation proceeding, 265 NLRB No. 157 (1982), I would find that the faculty employees involved herein are managerial personnel. Since I would revoke the Union's certification, I would deny the General Counsel's Motion for Summary Judgment.

Dated, Washington, D.C.

24 August 1983

Robert P. Hunter, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Faculty Life Committee of the College of Arts and Sciences as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time faculty employees employed by the Employer in the College of Arts and Sciences of Lewis University, now located in Romeoville, Illinois, including professors and associate professors, assistant professors and instructors excluding all professional librarians, part-time faculty employees, all faculty employees of The College of Nursing, Business and Continuing Education, all deans, guidance counselors, office clerical employees, guards, supervisors as defined in the Act and all other employees.

LEWIS UNIVERSITY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 881, Chicago, Illinois 60604, Telephone 312--353--7597.